REMARKS

Claims 1 and 3-7 are pending in the instant application. Claims 1 and 3-7 have been rejected. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

I. Rejection of Claims Under 35 U.S.C. §103

Claims 1-7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Wefler et al. in view of Orson, Sr. It is suggested that Wefler et al. teach all the featured elements of the instant invention, except for the specific oil or fragrance present in the active gel in the claimed range of percent weight and the emanator in physical contact with the end of the wick opposite the reservoir. The Examiner suggests that the device of Wefler et al. would be capable of performing Applicants' intended use and it would have been obvious to one of skill in the art to discover the optimum or workable ranges using routine skill in the art. It is further suggested that Orson, Sr. discloses a dispensing device comprising an active gel and a wick with an emanator in physical contact with the wick. The Examiner suggests that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an emanator for the wick of Wefler et al., as taught by Orson, Sr., since with such a modification the addition of the emanator facilitates diffusion of the oil or fragrance into the surrounding environment by the process of evaporation. Applicants respectfully traverse this rejection.

MPEP 2141 indicates that when applying 35 U.S.C. 103, the following basic tenets of patent law must be adhered to:

(A) The claimed invention must be considered as a whole;

(B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;

(C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention and

(D) Reasonable expectation of success is the standard with which obviousness is determined.

Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

When considering the teachings of Wefler et al. as a whole, Wefler et al. disclose an air freshener dispenser device with a heating element for heat-promotion of air freshener into the atmosphere at a controlled uniform rate over an extended period of time. See abstract and column 1, lines 53-56. This is in contrast to the general teachings of Orson, Sr., which provide aqueous compositions of 5-methyl-3-methoxy butanol (MMB) as a fragrance solubilizer to improve solubility and evaporation rates of volatile fragrances up to 30%. See column 3, line 56, to column 4, line 18. As such, there would have been simply no motivation for one of skill in the art to look to Orson, Sr., which teaches compositions, and identify modifications for the device of Wefler et al. as these references disclose different aspects of dispensing fragrances, *i.e.*, the dispensing device versus the characteristics of the fragrance.

The Patent Office "cannot use hindsight reconstruction to pick and choose among isolated disclosure in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1780, 1783 (Fed. Cir. 1988). Rather, in making a rejection under 35 U.S.C. 103(a), the Patent Office must show a teaching or motivation to combine the cited prior art references. *See Dembiczak*, 1783 F.3d at 999, 50 USPQ2d at 1617. "Combining prior art references without evidence for such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." *Id.* Therefore, "[w]hen determining the patentability of a claimed invention which combines two known elements, 'the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.'" *In re Beattie*, 974 F.2d 1309, 1311-12, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992)(quoting *Lindemann*, 730 F.2d at 1462, 221 USPQ at 488).

In this regard, Applicants respectfully believe that the Examiner has used the rejected claims as a blueprint for reconstructing the elements of the claimed invention on the basis that it would have been obvious to one having ordinary skill in the art to provide an emanator for the wick of Wefler et al., as taught by Orson, Sr. since the emanator facilitates diffusion of the oil or fragrance into the surrounding environment by the process of evaporation. However, the whole of the teachings of Wefler et al. resolve the issue of facilitating diffusion of an oil or fragrance into the atmosphere by employing a heating element for heat-promotion of the air freshener into the atmosphere at a controlled

uniform rate over an extended period of time. Therefore, again, there would have been no rationale for the skilled artisan to look to Orson, Sr. for an emanator to facilitate diffusion of a fragrance into the atmosphere as the teachings of Wefler et al. specifically address this point. Accordingly, because there is no teaching, suggestion or motivation to modify or combine the referenced teachings, the cited references cannot be held to make obvious the present invention under 35 U.S.C. 103(a). It is therefore respectfully requested that this rejection be reconsidered and withdrawn.

II. Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,

Jane Massey Licata
Registration No. 32,257

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Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515